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IN THE

Supreme Court of the United States

October Term, 1957
No. 178

JOHN RUSSELL CROOKER, JR.,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

Opinion Below.

The opinion of the Supreme Court of the State of California is reported in 47 Cal. 2d 348, 303 P. 2d 753.

Jurisdictional Statement and Proceedings in the Courts Below.

Defendant and petitioner John Russell Crooker, Jr., was charged in an Information filed by the District Attorney of the County of Los Angeles on August 3, 1955, with the crime of murder and it was alleged that he did murder Norma McCauley on or about July 5, 1955, in violation of California Penal Code, Section 187.

Defendant was arraigned on August 22, 1955, with his counsel present, entered a plea of Not Guilty and waived

time for trial. The matter proceeded to trial before a jury which, on December 9, 1955, returned a verdict finding the defendant, John Russell Crooker, Jr., guilty of murder, a felony, as charged in the Information, and found it to be Murder of the First Degree. Thereafter, defendant's motions to set aside the verdict and for a new trial were denied and on December 12, 1955, the judgment was pronounced sentencing the defendant to suffer the death penalty for the offense of Murder of the First Degree. An automatic appeal from the judgment was taken to the California Supreme Court and the judgment and order were affirmed on November 21, 1956. (*People v. Crooker,* 47 Cal. 2d 348, 303 P. 2d 753.) A petition for rehearing was denied December 19, 1956. A petition for certiorari was filed April 19, 1957, and certiorari was granted June 10, 1957. (*Crooker v. People of the State of California,* 354 U. S. 908, 77 S. Ct. 1300.) The jurisdiction of this Court rests upon 28 U. S. C. 1257(3).

Questions Presented for Review.

Petition for writ of certiorari to the Supreme Court of the State of California was granted by this Honorable Court, limited to the questions:

1. Was the defendant denied Due Process of Law by the refusal of the investigation officers to allow him to consult with an attorney upon demand being made to do so while he was in custody?

2. Was the defendant denied Due Process of Law by the admission into evidence of a confession which was taken from him while in custody and after he had been in custody for 14 hours and had not been allowed to consult with his attorney?

Crooker v. People of the State of California, supra, 354 U. S. 908, 77 S. Ct. 1300.

Statement of Facts.

A. In General Concerning the Crime.

On the morning of July 5, 1955, the body of Norma E. McCauley was found in the bedroom of her home by her five year old son. He came back and said to Laurie Dromtra (a maid), "Laurie, you better go in; Mommie is in a mess." Laurie Dromtra looked at the deceased, who was lying on the couch with her face down, and saw blood on her ankles, feet and legs. Mrs. McCauley had an article around her neck that looked like the wrap she wore the night before to a barbecue dinner [Tr. of R. pp. 15-16]. Laurie Dromtra called the brother of the deceased, one John Thompson [Tr. of R. p. 16].

John Thompson arrived at the home of the deceased, 1100 Somera Road, Los Angeles, at approximately 8:20 in the morning. He found his sister lying face down on the chaise lounge. He knew she had been murdered because blood was splattered all over the room [Tr. of R. p. 57]. He noticed that she had something turned around her neck, as if she had been choked to death. Mr. Thompson noticed blood on the chaise lounge and a splatter of blood on the wall [Tr. of R. p. 58].

Dr. Frederick D. Newbarr performed an autopsy on the body of Norma E. McCauley on July 6, 1955. It was his opinion that the cause of death was massive hemorrhage due to a stab wound of the chest and other conditions, with strangulation [Tr. of R. p. 2]. The deceased was a Caucasian female, measuring four feet, eleven and one-half inches in height and weighing 96 pounds. Her stated age was 33 years [Tr. of R. p. 3]. The doctor found approximately eleven wounds on the body of Mrs. McCauley [Tr. of R. pp. 3-4]. He found a depression

in the skin of the right neck and an abrasion across the mid portion of the anterior neck [Tr. of R. p. 5]. It was the opinion of the autopsy surgeon that the wounds described by him were defense wounds [Tr. of R. p. 6]. The doctor was of the opinion also that the strangulation took place at the time Mrs. McCauley was dying [Tr. of R. p. 7]. It was also his opinion that the wounds were actual evidence of a struggle [Tr. of R. p. 10].

Defendant (and petitioner) John Russell Crooker, aged 31 years [Tr. of R. p. 170], had studied one academic year of law at U. C. L. A. and had had the same courses at Southwestern [Tr. of R. pp. 528-529]. He had studied criminal law [Tr. of R. p. 611].*

Crooker had entered Pepperdine College in 1950 and graduated from that institution in 1953, receiving a Bachelor of Arts degree [Tr. of R. p. 442].

Crooker was hired by the McCauleys in June, 1953, to perform houseboy duties, ranging from baby sitting to bartending [Tr. of R. p. 443]. He entered U. C. L. A. Law School in the fall of 1953.

The defendant is five feet, eleven and one-half inches tall. He weighs approximately 174 pounds.

Louis J. Socha, a taxicab driver for the Yellow Cab Company, on July 4, 1955, in the late afternoon (he went to work about ten minutes to five o'clock) received a radio call to proceed to the U. C. L. A. Law Building. This occurred as he was leaving the garage in Beverly Hills [Tr. of R. pp. 59-60].

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*Defendant was able to explain to the polygraph operator that the polygraph was not valid for court use unless the attorneys stipulated [Tr. of R. p. 134; see Argument, II, *infra*.]

He proceeded to that location; a man came across the lawn who said he was the one who had called the cab. He then got in the cab and Socha drove to Somera Road at the passenger's direction. Somera Road has a dead end at the 1100 block; the cab driver proceeded to that location, turned around, proceeded slowly, and then was directed to stop in front of a particular house. The cab driver identified Exhibit 10 (a photograph of the McCauley home) as showing the house at which he stopped [Tr. of R. pp. 61-62].

The passenger paid his fare, got out of the cab and crossed towards the home shown in Exhibit 10. This occurred about 5:30 p.m. The passenger said that he was going to look for a home for rent. He was "Mr. Crooker," the defendant [Tr. of R. pp. 62-63].

B. Testimony of Crooker as to Events Preceding the Crime.

John Russell Crooker testified that his relationship with Norma McCauley changed from that of employee, to a feeling of mutual love, in the fall of 1953 [Tr. of R. p. 447].

When the defendant moved to the apartment at 5128 Marathon Street, a lamp and a chair were provided by the deceased [Tr. of R. p. 449]. The defendant moved there on September 11, 1954.

From that time on they "would see each other" three times a week; "sometimes once a week"; on the average of at least twice a week. On occasions she left money there [Tr. of R. p. 451].

Crooker testified that at about 10:30 or 11:00 p.m., July 3, 1955, he parked his car near the deceased's

home, stood by a tree on the grounds of her home, watched a car drive by and stop for three quarters of an hour, during which time the defendant "got up on that branch of the tree." The car left while he was trying to get a view of it. He fell out of the tree and hurt his hand on the rocky ground underneath the tree [Tr. of R. pp. 472-475].

The defendant waited in the vicinity until about 2:00 or 2:30 a.m. He then entered the house and went into the children's room [Tr. of R. p. 480].

He went into the closet marked "F" on the diagram. He wanted to smoke and found a glass on the play shelf and did smoke by the window. The glass was People's Exhibit 30 [Tr. of R. pp. 480-481].

When he was hiding in the closet and using the glass as an ashtray, he also put urine in it because he felt it would be too noisy to use the bathroom. He asked the deceased to empty it. He didn't do it himself because ". . . (w)e were very nervous about the time of day and wanted to conclude this meeting" [Tr. of R. p. 503].

The deceased and the defendant went into her bedroom nd talked until about 6:00 o'clock [Tr. of R. p. 483].

The defendant then left and went to his home and returned to the vicinity of the McCauley home the same day about 2:30 or 3:00 in the afternoon [Tr. of R. pp. 488-489].

After observing the deceased and the Thompson home for a time, he drove "down to U. C. L. A." to the parking lot [Tr. of R. p. 489].

He then called a cab and directed the driver to take him back to 1100 Somera Road, which he did [Tr. of R. p. 490].

The defendant waited in the vicinity of the deceased's house until about 9:30 at which time he went to a house under construction across the street from the deceased's home [Tr. of R. p. 491].

He finally left that place about a quarter to 1:00 on the morning of the 5th.

At 12:30, two cars came to the McCauley house. One of the cars went into the garage. He thought he saw the deceased and "someone who was with her." He heard the front door close. He heard a car drive away. He then walked down the hill from where he could see the kitchen. He thinks that he heard the phone. He saw the deceased at the phone in the kitchen at the bar [Tr. of R. p. 492].

He then returned to the house under construction where he stayed until a quarter to 1:00 at which time he walked down to U. C. L. A. [Tr. of R. p. 494].

Crooker testified that from the time the cab driver dropped him off on the evening of July 4th and the early morning hours of July 5th, he did not go inside the McCauley home; he did not go inside the deceased's bedroom; he did not kill Norma McCauley.

The defendant told the officers that he had driven to the beach on July 4th and that he had hurt his hand separating tangled bumpers of a car. This was not true but he said that because he didn't want to tell them about Norma McCauley. The reason for this was, "Because it involved things that I did not want to discuss with anyone until I found out what was happening" [Tr. of R. p. 501].

C. The Cross-Examination of Crooker With Reference to the Crime.

Defendant and deceased had quarrels from time to time; during the month of June, he told her that he was going to write to her mother and that he was going to talk to her mother about their relationship and to ask her mother to intercede "in what I thought was troubling Norma" [Tr. of R. pp. 529-531].

Defendant was not "going to tell Norma's mother" of his "intimacies" with deceased [Tr. of R. p. 531].

Defendant was "always anxious" about his relationship towards deceased and "it was very intense in the month of June" [Tr. of R. p. 532].

Deceased did not express a desire to break off her relationship with defendant but he suspected that she was trying to do so [Tr. of R. p. 533].

During the month of June defendant sent a telegram to deceased telling her that he had tried to contact her and that if he was unable to contact her by the following day, he would "proceed without further consideration." By the words last quoted, he was referring to contacting her mother [Tr. of R. pp. 541-542].

During the early part of June, defendant received approximately $300.00 in cash from deceased. Previous to receiving the money, he had mentioned to her "about going back to Maine" [Tr. of R. p. 544].

On or about June 4th (although defendant is not sure of the date) defendant wrote a letter to deceased stating:

> "As it is, I am aware of your intentions. You made them abundantly clear to me, especially after hearing the first writing of the context of this letter, you made the fact crystal-clear that you intended to

attempt to purge every breath of our love from your life, and you mean to do this despite any effort or caution which I may direct toward you." [Tr. of R. p. 549.]

By June 4, 1955, the deceased had made it "abundantly clear" by her demeanor, her "nervousness about our relationship, the strained feeling which she expressed to me made me feel that she had ended the relationship" [Tr. of R. p. 550].

In the same letter the defendant stated that if deceased did not "give expression to the bond" which existed between them, he would write to her father, mother, and brother, separately, stating that he would explain their love and that he was going to explain that he is her "husband in fact," and tell them,

". . . the moral course and if it isn't pursued I can no longer consider myself singly responsible before God, society, or myself, for the past, the present, or the future, and I will be relieved of a great burden." [Tr. of R. pp. 550-551.]

Defendant did not know (at the time of his testimony) what he meant by "moral course" in the letter. He does not know whether he was referring to marriage. He could not marry her because he was married [Tr. of R. p. 551].

When the defendant stated, on direct examination, that he accepted money from the deceased believing that if his "plans do not materialize," he would repay her, he meant by the "plans" that they expected that they would marry. He did not take any steps toward getting a divorce from his wife, nor did he keep any records of the money he received from the deceased "so that (he) could repay her" [Tr. of R. p. 554].

The defendant, on the witness stand, read the letter previously referred to as having been "mailed to Norma McCauley on the 4th day of June, 1955." He testified that he started the letter "My dear wife" and finished the letter, "Your husband, John." He received a sum of $300.00, approximately "after he had sent the letter" [Tr. of R. p. 555].

In the conversation in the early morning hours of July 4th, the deceased said that someone had found out about the relationship between defendant and deceased, but she said that she didn't know who the person was [Tr. of R. p. 574].

On that occasion defendant promised deceased that he would never see her again [Tr. of R. p. 575].

A promissory note dated June 1, 1954, was marked Exhibit 38 for Identification, and later received in evidence [Rep. Tr. p. 1637], and shown to the defendant; defendant was asked if that was the instrument he referred to when he previously testified that "she tore it up." He stated that it was not; but that he had never written more than one "evidence of debt for the sum of $450.00" which he handed to Norma McCauley [Tr. of R. pp. 604-605]. ". . . (i)t could only be one note" [Tr. of R. p. 606].

D. Other Facts Regarding the Crime.

Testimony was received that at the time of defendant's arrest he had scratches on his person, particularly on his neck. Color photographs of defendant's hands and face were identified and received in evidence. Defendant's story was that he hurt his hands separating tangled bumpers of automobiles [Tr. of R. p. 501]. He said that the injuries to his neck and chin were the result of shaving [Tr. of R. p. 73]. With reference to the route of the

alleged accident, the defendant preferred not to answer questions of the investigating officers [Tr. of R. pp. 73-74].

After the defendant had confessed the crime he was asked if he would return and re-enact what had occurred [Tr. of R. p. 304]. When defendant and the officers arrived at the home of the deceased, defendant indicated a door by which he said he had entered the home [Tr. of R. p. 306]. They went into the children's bedroom and defendant was asked to point out where he had hidden in that room. Defendant said that he had hidden in a closet. Defendant directed the officers from the nursery down the hallway and into the room which had been occupied by Norma McCauley. The dresser was indicated where the defendant said he found the knife [Tr. of R. p. 307]. Defendant said that he started to talk to the deceased and that she appeared to be falling asleep and not paying attention to him. He said that he had gotten up from the chaise lounge and had gone to the bathroom and that on his return he found the knife; that he wanted to continue the conversation in trying to effect a reconciliation and that she was still asleep; that he put his hands around her throat and she awoke and began to struggle and let out a scream. Defendant said that he put his hand over her mouth, reached into his pocket and pulled out the knife and pushed it in her. He said that he stabbed her a number of times and that he used the clothing that had been around her shoulders, tied it around her neck and choked her with it [Tr. of R. p. 308]. Defendant told the officers that he stayed in the room for approximately one hour; that he wiped the knife off with his handkerchief and put it back in his pocket. He said that he had taken the car keys from the purse and some money. He said that

he walked back to his car at U. C. L. A. [Tr. of R. pp. 308-309]. He said that, to the best of his knowledge, he had apparently thrown the knife and keys away.

There was testimony received that a latent fingerprint was found on a glass on the upper shelf in the clothes closet in the children's nursery. The glass had a yellow fluid with dissolved cigarette butts in it. There was testimony that it could have smelled like urine; it had a pungent odor [Tr. of R. p. 360]. It was a "fresh print," although it was hard to estimate the time it was placed there [Tr. of R. p. 365].

It was stipulated that the print found on the glass in the closet was the defendant's fingerprint [Tr. of R. pp. 373-374].

Testimony was also received by the trier of fact that the deceased, Norma McCauley, had expressed a fear of John Crooker to friends; that he had threatened to kill her if she did not go out with him. That in June, 1955, the deceased called the police and said that the call was regarding the defendant. No arrest was made of the defendant.

E. The Confession.

Frank Gravante, a police officer [Ex. 18 having been received in evidence subject to the jury passing on the question of its free and voluntary nature] testified concerning the making of the confession and was asked to read the document to the jury [Tr. of R. p. 301]. It read:

> "I, John Crooker, on Monday, July 4, 1955, attempted to communicate with Norma T. McCauley to talk with her and discuss the reasons and feelings for her rejections of our close and intimate relationship of nearly two years standing. As exactly as I

can recall the following facts constituted the sequence of events which culminated in her death. I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her residence. I may have stopped for gas on the way and arrived at the entrance of Bel Air at approximately 4:00 o'clock. I drove directly up past her home, saw her car in the garage and saw her two eldest children playing on the neighbor's lawn. Realizing the futility of continuing my attempts to talk with her at that time, I drove back down past her house, by her parents' residence, stopped to note some activity of bathers at their pool, and then proceeding to a vantage point on that side of the canyon. From there I watched until she drove down the road toward her parents' home.

"I then drove down to the Stone Canyon Drive entrance to Sunset, up the west entrance again and past her home again. I then drove down to the U. C. L. A. parking area and called a Yellow cab and was driven to her residence. I went around the house to the rear and entered by the door at the children's room. Then I waited until she returned with the children in the early evening hours. I hit (sic) in a closet in the children's room, waiting until they were asleep. Norma came home about 12:00 or 1:00 o'clock a.m. She was followed home by some other car. The other car's occupant waited until she closed her garage door and went around, opening her front door, and then drove away.

"I waited in the children's room until she was in her own bedroom. Then I opened her door, which was ajar. Norma was stunned to see me but she remained remarkably calm and self-contained. I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her

room and had taken the means described to see her. We talked for over an hour. Norma had been out, had some cocktails and felt sleepy. I tried again, as I had tried many, many times before by telephone and by letter to get her to tell me her reasons and feelings for leaving me. I told her that I could not believe that my threats were the answer. But Norma would not talk about it. I sat near her on the chaise lounge, smoking one cigarette after another and every few minutes going close to her to see whether or not she was really sleeping, and I think she was at least dozing. And I didn't know what to do. For days and days I had not known what to do. I had tried threats and coercion and profession of my feeling for her. She had rebuffed all my attempts and now she was going to sleep.

"On the dresser by the door to her bedroom were a child's toy revolver and other things. I found a kitchen knife about ten inches long with the blade about six inches. I took the knife and went back to the chaise lounge. Then I put the knife in my coat pocket and knelt beside her for what seemed to be a long time. She was asleep. I took her throat in my hand and she awoke and started to scream. I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it but she still made sounds and struggled on the lounge. I choked her more with some clothes around her throat and after a long time she was still and the house was still, and I couldn't realize that Norma was gone. I took the knife, her car keys, and some money and thought I must take her car and go, but I walked and walked and walked. The dawn was coming when I reached my car, got in, drove home,

took off my clothes and threw them into the incinerator. I went to bed and must have slept some because shortly before noon I couldn't sleep any more. I just waited for time to run out.

"Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator. I took some money from her purse and her keys to her car and the knife with me.

"John R. Crooker, Jr." [Tr. of R. pp. 301-303.]

(1) Cross-Examination of Defendant With Reference to the Confession.

On cross-examination defendant testified that when he wrote in Exhibit 18 that he attempted to contact the deceased on July 4th, Gravante did not tell him to write that, and in none of the conversations with the police did they tell him that he had attempted to talk to her on the 4th [Tr. of R. p. 586].

Nor did they say anything about "discerning the reasons and feelings for her rejection of your close and intimate relationship," but it was not true that she rejected the relationship [Tr. of R. p. 586].

The relationship had existed for nearly two years and the police had no way of knowing that. Although having "our correspondence" they knew at least that they did have a relationship [Tr. of R. p. 587].

The language, "As exactly as I can recall, the following facts constituted a sequence of events which culminated in her death," was defendant's language. Gravante did not suggest it [Tr. of R. p. 587].

The next language, "I left my place of residence at approximately 3:00 o'clock p.m. and drove toward her

residence," was true, nor did "they" suggest "that" to defendant [Tr. of R. p. 587].

The language, "I may have stopped for gas on the way, and arrived at the east entrance of Bel Air at approximately 4:00 o'clock," was true "approximately" and was not suggested to defendant [Tr. of R. p. 587].

The language about driving past the home, seeing the car in the garage and the two children was the defendant's own idea and it was the truth [Tr. of R. p. 588].

With reference to the language, "Realizing the futility of continuing my attempt to talk with her at that time," the defendant "didn't mean anything"; the police did not suggest or tell him that his attempt to talk with her would be futile. Defendant does not recall what he had intended but he "tried to make the document look reasonable enough so that they would leave (him) alone" [Tr. of R. p. 588].

The only portion of the statement "so far" (on cross-examination) that is untrue is the phrase, "Realizing the futility of continuing my attempt to talk with her at that time." On occasions in June, deceased had refused to talk with the defendant. A policeman had come to the house on occasions and he never got in and that was a "futile attempt to talk with her" [Tr. of R. pp. 588-589].

The language, "and then proceeding to a vantage point on that side of the canyon" is true [Tr. of R. p. 589].

But the language, "From there I watched until she drove down the road toward her parents' home," is not true; no one suggested that he "put that in there." It was his own idea. He cannot give a specific reason for saying "that." Originally he wrote "toward her *mother*" and then he crossed out "*mother*" and put in "*parents' home*." He does not recall that anyone suggested that change [Tr. of R. p. 590].

The language, "Up the west entrance again and past her home again," is not true. No one told him to put it in. He "just wrote it" [Tr. of R. p. 591]:

The language, "I then drove to the U. C. L. A. parking area," is true and nobody told him to write that [Tr. of R. p. 591].

The language, "And called a Yellow cab and was driven to her residence," is the truth and, "I went around the house to the rear and entered by the door to the children's room," was not suggested by anyone [Tr. of R. p. 591].

With reference to the language, "Then I waited until she returned with the children in the early evening hours," the police did not know that that was true. They did not suggest it to him and he wrote it of his own volition [Tr. of R. p. 591].

With reference to the language, "I hid in a closet in the children's room, waiting until they were asleep," the police did not suggest it and defendant wrote it of his own volition [Tr. of R. p. 592].

The language, "Norma came home about 12:00 or 1:00 o'clock a.m.," is true and the police did not tell him that. He wrote it of his own volition [Tr. of R. p. 592].

The language, "she was followed home by some other car," is true and was not suggested by the police. He wrote it of his own volition [Tr. of R. p. 592].

With reference to the language, "The other car's occupants waited until she closed her garage door and went around opening her front door, and then drove away," was not given him by the police; it was his own idea and while he "didn't write any of the document of (his) own

volition" that particular sentence was his idea [Tr. of R. pp. 592-593].

The language, "I waited in the children's room until she was in her own bedroom. Then I opened the door, which was ajar," was not told defendant by the police. He wrote it himself and no one suggested it to him [Tr. of R. p. 593].

With reference to the language, "Norma was stunned to see me, but she remained remarkable (sic) calm and self contained," the police did not suggest that Norma remained calm and self-contained, nor did anyone else [Tr. of R. p. 593].

With reference to the language, "I, on the other hand, was extremely nervous and generally unable to make myself realize that I was there in her room and had taken the measures described to see her." No one suggested it and that paragraph was his own creation [Tr. of R. pp. 593-594].

The police had not told him of the facts contained in the statement, "We talked for hour on hour. Norma had been out, had had some cocktails, and felt sleepy," nor was he questioned about those things. These words were his own thought and his own language [Tr. of R. p. 594].

The language, "I tried again, as I had tried many, many times before by telephone and by letter to get her to tell me her reasons and feelings for leaving me," was not suggested by the police. Defendant had not told that to them [Tr. of R. pp. 594-595].

"This" (*i.e.*, the last-quoted statement) was not the truth; he had tried "especially during the period of June—from about the middle of the month until I saw her on

the third, to contact her, and I had unsuccessfully tried during that period of time, right there" [Tr. of R. p. 595].

With reference to the language, "I told her that I could not believe that my threats were the answer," the police had told him that he was extorting money from the deceased. His telegram of June 18, was not a threat but the language, "will proceed without further consideration," inferring that the defendant was going to talk with deceased's mother, he would consider a threat [Tr. of R. p. 595].

The language in the letter of June 4th [Ex. 37], wherein he stated that he would write to deceased's father, mother and brother, he would consider it a threat "then" [Tr. of R. p. 595].

With reference to the language, "But Norma would talk about it. She started to go to sleep," it "appears" that the word "not" is omitted before the word talk; the police did not suggest that Norma started to go to sleep [Tr. of R. p. 596].

The police did not suggest any part of the language, "I couldn't believe it. I sat near her on the chaise lounge, smoking one cigarette after another and every few minutes going close to her to see whether or not she was really sleeping" [Tr. of R. p. 596].

Nor did they suggest, "And I think she was at least dozing, and I didn't know what to do. For days and days I had not known what to do. I had tried threats and coercion and profession of my feelings for her. She had rebuffed all my attempts and now she was going to sleep" [Tr. of R. p. 596]. Defendant does not know what he meant to convey when he wrote "and now she was going to sleep" [Tr. of R. p. 597].

On being asked whether he meant surprise or anger by the "wonder" *(sic)* mark after the sentence "and now she was going to sleep," the defendant stated he had no recollection; and when asked if he were offended "by that," defendant testified, "I don't understand your question"; and when asked, "You were offended when she went to sleep?" he answered, "I don't know how to answer your question" [Tr. of R. p. 597].

With reference to the language, "on the dresser by the door to her bedroom with a child's toy revolver and other things, I found a kitchen knife about ten inches long with a blade of about six inches," none of these matters were suggested in the questions by the police [Tr. of R. p. 597].

With reference to the language, "I took the knife and went back to the chaise lounge. Then I put the knife in my coat pocket and knelt beside her, for what *she* (sic) to be a long time," defendant testified that, "From the context, it would seem that that word would be *'seemed'* instead of the word 'she'" [Tr. of R. pp. 597-598].

The police did not suggest to the defendant that he had put the knife in his pocket [Tr. of R. p. 598].

The police did not suggest to defendant the following language, "(A)nd knelt beside her for what seemed to be a long time. She was asleep." They did not ask about that and it was all his own idea [Tr. of R. p. 598].

With reference to the language, "I took her throat in my hands and she awoke and started to scream," the officers suggested this to defendant, "When they were asking me questions about strangulation and my—they were so vague about it that I didn't know how she had been strangled," but the officers did not tell him that he took her throat in his hands and that she awoke and

started to scream. But they suggested "it" through their questions, but not "that she started to scream" [Tr. of R. pp. 598-599].

With reference to the, "I heard the maid, so I reached the knife in my pocket while holding my hand over her mouth," the officers did suggest that he held his hand over her mouth because "someone" had told him that the marks on his hands "looked like bite marks to them." These marks were on his left hand. He is right handed [Tr. of R. p. 599].

With reference to the language, "While holding my hand over her mouth. Then I hit her with the knife and pushed and pushed on it," the officers did not suggest to defendant that he "pushed and pushed on that knife"; "that" was his idea [Tr. of R. p. 599].

When asked what he meant when he said he pushed and pushed on the knife, defendant testified, "I didn't have any—I don't have any recollection of a specific meaning for it." In writing it he "meant to convey a semblance of a confession that would make the police" leave him alone and it was his own idea of "writing it that way" [Tr. of R. p. 600].

With reference to the language, "But she still made sounds and struggled on the lounge. I choked her more with some clothing—wound clothing around her throat, and after a long time she was still and the house was still and I couldn't realize that Norma was gone," the police did not suggest that she "had made sounds and struggled on that lounge"; that was his idea; only the point that "she had been found on the chaise lounge" was suggested to him [Tr. of R. p. 600].

No one suggested, "but she still made sounds and struggled on the lounge" nor did anyone suggest to him that he couldn't realize "that Norma was gone," although they told him that Norma was dead "if that has any connection" [Tr. of R. pp. 600-601].

The ideas in the sentence, "I took the knife, her car keys, and some money, and thought I must take her car and go," was suggested by Sergeant Gotch. That is why he wrote that particular sentence [Tr. of R. p. 601].

The police did not tell the defendant that, "I walked and walked and walked," nor did they suggest it to him. It was his own idea. It was true that on the 5th he walked back to U. C. L. A. [Tr. of R. p. 601].

No one suggested the following ideas, "The dawn was coming when I reached my car, got in, drove home, took off my clothes and threw them into the incinerator"; "that" was his own idea. The police in none of their questions even mentioned an incinerator [Tr. of R. p. 602].

In the statement, "I went to bed and must have slept some because shortly before noon I couldn't slept (sic) any more—" From the context, defendant would say he meant "couldn't sleep any more" [Tr. of R. p. 602].

The defendant has no specific recollection of what he meant by saying that, "I just waited for time to run out" [Tr. of R. p. 603].

With reference to the language, "Somewhere along the way I must have thrown out her keys and the knife because I didn't have them in the things I threw in the incinerator." Officer Gravante suggested "that" to defendant after he had read page four of the statement; he did not dictate "those two (sic) sentences"; defendant

"just wrote them" and "that" was his own choice of language [Tr. of R. p. 604].

The next paragraph, "I took some money from her purse and her keys to her car and the knife with me," was suggested to defendant between the writing of the first and second paragraphs; the paragraph was not dictated and it was defendant's own choice of language [Tr. of R. p. 604].

Juryman Hoyt asked the defendant a series of questions with reference to the writing of Exhibit 18. In reply, the defendant stated that with the exception previously mentioned (with reference to the insertion of the word "knife" after the word "kitchen") Officer Gravante gave him no indication of the substance of what he was "to write about"; that during the writing the defendant asked the officer for coffee; that Officer Gravante did not tell him what he was writing about before he started to write; that as the defendant finished each page the officer took it and that was the first time the officer was aware of what the defendant was writing or what he intended to write on that particular page [Tr. of R. pp. 217-220].

(2) Direct Examination of Defendant With Reference to the Confession.

At the time the defendant wrote Exhibit 18 he knew what he was writing and he wrote it

> "(B)ecause I didn't want to go on with this that I had been going on for all these hours. I wanted to get away from these officers because I wanted to talk to an attorney before I told what I knew about Norma McCauley, the details of our relationship." [Tr. of R. p. 511.]

The officers told him that if he wrote "this" they would leave him alone; Officer Hooper hit him in the stomach and asked him if he had heard him. The defendant said "yes," and the officer said, "Well, answer me," and that if he didn't answer his questions and "tell him what he wanted to hear, that he would work on me like that for the rest of the night; and Officer Gravante said that he meant it." The defendant asked what he could do to make them leave him alone. Gravante said, "Tell us about this; you know what has happened; now tell us about it" [Tr. of R. p. 512].

The officers, in the questions they had asked on July 5th and the early morning of the 6th, furnished the defendant "information regarding any circumstances of Norma's death." Sergeant Gotch told him that she was dead; that she had been strangled and Kirk found her on the chaise lounge. Sergeant Gotch said that a little toy car had been found in the chaise lounge [Tr. of R. p. 512].

While the defendant was writing Exhibit 18, page 5 was the only page on which Officer Gravante had "anything to do with the subject matter" and in that regard he asked, "What about the knife?" and "What about the keys?" [Tr. of R. p. 514].

The officer read the pages as the defendant wrote them; he was handing him each page. When he handed him page four, the defendant wrote the first paragraph of page five as a result of a question but there was no comment that prompted the defendant to write the last paragraph [Tr. of R. p. 514].

Prior to writing Exhibit 18, the defendant was questioned "about money" and Sergeant Gotch, Central Station, told the defendant that he thought that the defendant

stabbed her, strangled her "took her money and left" [Tr. of R. p. 515]. (This is an attempt to account for the defendant's including in Exhibit 18 the fact of his taking money after the killing.)

The defendant testified with reference to People's Exhibit 18 that:

He did not in fact hide in the closet in the children's room on the evening of July 4th.

He was not in her room in the early morning hours of July 5th.

He did not on that occasion talk to her and she started to go to sleep.

He did not in the early morning hours of July 5th find a kitchen knife about ten inches long with a blade about six inches on a dresser by the door in the bedroom.

He did not in the early morning hours of July 5th take Norma's throat in his hands at which time she started to scream.

He did not hear the maid and so reached for the knife while holding his hand over her mouth.

He did not choke her with clothing around her throat or take the knife and push on it.

He did not in the early morning hours of July 5th take the knife, the car keys, and some money [Tr. of R. pp. 520-521].

Although the defendant in Exhibit 18 said that he had taken off his clothes and had thrown them into the incinerator, he did not as a matter of fact throw any clothes in the incinerator on the early morning hours of July 5th, or around that period of time on July 2nd, 3rd, or 4th [Tr. of R. p. 645].

He made the statement, "Because I felt that with a stabbing, that there would be dirty clothes . . . bloody clothes" [Tr. of R. p. 645].

After the defendant wrote Exhibit 18 in the early morning hours of July 6th he went to the deceased's bedroom with a number of officers.

At that time Hooper asked the defendant if he had left Norma on the chaise lounge. The defendant said that he thought so. The officers pointed to a pocketbook and a small black purse on the dresser and asked the defendant where he had left "it." The defendant said he didn't remember. The officers asked if he had left "it here." The defendant said he thought so [Tr. of R. pp. 521-522].

Sergeant Hooper asked the defendant if "we" (defendant and deceased) struggled. Defendant said he didn't think so. Officer asked how the blood stains got on various places. Defendant said he didn't know.

Another officer, defendant thinks, was Gravante and he asked where defendant found the knife, took him to a dresser in the bedroom and asked him if that was where he found it. Defendant said, "Yes, but that dresser looked different." The officers asked the defendant if he left through the bedroom exit onto the lawn. Defendant told them that he did not think so.

One of the officers asked the defendant if he heard the maid. Defendant said he thought so.

The officers took defendant to the kitchen. Defendant told them that he did not know where the knife was. He helped them look for the knife. Defendant kept telling them that he was looking for "that set of steak knives, and what kind of a box it was in, et cetera."

The officers asked him over and over again where the knife was. Defendant told them he didn't know and "implored them to believe (him), and that we could look for it" [Tr. of R. pp. 523-524].

"On the way down the hill" the officers kept asking about the knife and the defendant kept telling Officer Gravante "over and over, 'I don't know where it is. Make him leave me alone'" [Tr. of R. p. 525].

Before they left the house they asked if he left with reference to various doors, as to each he said he didn't think so. Then they asked with reference to the kitchen exit and defendant said he thought he went out that way [Tr. of R. p. 526].

In the bedroom, Sergeant Hooper asked if the defendant washed up in the bathroom. Defendant said he didn't think so; he did not tell him that he took his handkerchief and wiped off the knife and went into the bathroom [Tr. of R. p. 526].

F. Evidence With Reference to the Issue of Defendant's Request for an Attorney.

(1) Testimony of the Investigating Officers.

Edward C. Kruegar is a police officer for the City of Los Angeles, assigned to the Hollywood Division, and was such on July 5, 1955 [Tr. of R. p. 123.]

On July 5, 1955 he saw the defendant in Apartment 105 at 5128 Marathon Street, Los Angeles. He entered the apartment with a key which he obtained from the manager. When he entered, the defendant was there. The officer told him he was under arrest. The defendant said nothing at that time. [Tr. of R. pp. 123-124.]

The defendant did not ask permission to use the phone nor ask if "he would have time to make a telephone call to an attorney." He arrived at approximately 1:30 p.m. [Tr. of R. pp. 125-126.]

Wayne L. Jackson is a police officer for the City of Los Angeles and assigned to the Hollywood Division [Tr. of R. p. 128.]

On July 5, 1955 he was temporarily attached to the Detective Bureau and on that date he saw the defendant at 5128 Marathon, where he entered with Officer Kruegar.

Officer Kruegar told Crooker he was under arrest. The defendant said nothing. Officer Jackson does not remember the defendant saying anything about wanting to call an attorney [Tr. of R. p. 130].

Grover Armstrong is a lieutenant of police in charge of the West Los Angeles Detective Division and was such on July 4th and 5th of 1955 [Tr. of R. pp. 65-66].

He met the defendant Crooker on July 5, 1955 at about 3:30 in the afternoon in the defendant's apartment on Marathon Street in Hollywood.

He was accompanied by five other officers and Deputy District Attorney Alexander [Tr. of R. p. 66].

Other than identifying himself, Lieutenant Armstrong first spoke to the defendant at approximately 8:30 the same day at the Crime Laboratory.

During the time that Lieutenant Armstrong was in the defendant's apartment he did not recall the defendant saying that he wished to get in touch with an attorney [Tr. of R. p. 66].

Officer Stambler is a police officer attached to the West Los Angeles Detective Bureau and was such on July 5,

1955, on which day, at approximately 2:00 or 2:15, he saw the defendant in his apartment, on Marathon [Tr. of R. p. 100].

While in the defendant's apartment, Officer Stambler said to the defendant, "You don't seem to be interested about this thing at all, do you?" The defendant said, "Well, I have an idea what it is." The officer said, "Well, you couldn't have, because I said nothing about the case at all, . . ." That was all of the conversation [Tr. of R. p. 102].

Frank Gravante is a police officer for the City of Los Angeles, attached to West Los Angeles Detective Bureau, and was such on July 6, 1955.

Officer Gravante first saw the defendant at approximately 10:35 p.m., July 5, 1955, at the West Los Angeles Detective Bureau, in the Homicide Room; no other person was present.

The officer introduced himself to the defendant as one of the investigating officers and at that time the defendant did not say anything about wanting to see an attorney.

He next saw him at approximately 1:15 a.m., on July 6th, when he was with him until approximately 2:00 a.m. with four other police officers; Lieutenant Armstrong was asking most of the questions; two of the others occasionally asked the questions.

During that time, from 1:15 until 2:00, the defendant did not, in the presence of Gravante, say that he wanted to see an attorney.

At no time between the time when Officer Gravante first saw the defendant at 10:30 p.m., until the time when the defendant started writing Exhibit 18, did the defendant say in his presence that he wanted to see an attorney.

The conversation in the Crime Laboratory started at about 8:30 and lasted about an hour "more or less;" there were two other officers present and a third officer was "in and out." [Tr. of R. p. 66.]

During the conversation, from 8:30 until approximately 9:30, the defendant did not, to Lieutenant Armstrong's recollection, request an attorney [Tr. of R. p. 70].

Lieutenant Armstrong next saw the defendant at West Los Angeles, at about 9:45, after the conversation in the Crime Laboratory, and questioned him from 11 o'clock until about 12:15 [Tr. of R. pp. 71-72].

Other officers were in and out of the room; Lieutenant Armstrong did most of the questioning. Some of the others occasionally asked some of the questions.

Lieutenant Armstrong started the questioning by asking the defendant to describe his actions on July 4th, particularly with reference to abrasions he had on his fingers and the scratch on his neck and chin. The defendant stated that he had injured his fingers in releasing a car "bumper hookup" and his neck and chin by shaving [Tr. of R. p. 73].

On being asked questions with reference to the route to the scene of the alleged traffic occurrence, the defendant stated that he preferred not to answer; but did not say that he preferred to wait until he had discussed the matter with an attorney [Tr. of R. pp. 73-74].

He was asked if he had been on Somera Road, and he said no. When asked as to why he had denied this he declined to answer. With reference to the route of the alleged accident, he said, "I don't care to answer." [Tr. of R. p. 74.]

During this period, from 11:15 to 12:15, the defendant was asked if he had killed Mrs. McCauley and he said no [Tr. of R. p. 74].

He also denied being in Mrs. McCauley's home between midnight and 4:00 a.m., on July 5th.

Lieutenant Armstrong's best recollection is that the first time he heard that the defendant would like to call an attorney was in Mr. Roll's office the next day, following the writing of the confession, he did not hear the defendant ask for an attorney in his presence before that time [Tr. of R. pp. 75-76].

At one o'clock the doctor entered the room and examined the wounds on the defendant's fingers and face.

At 8:30 p.m. the defendant was given a carton of milk and a sandwich. During "coffee breaks" the defendant asked for coffee and when he did, he was given it. He did not ask for anything else [Tr. of R. pp. 78-79].

Jack Gotch, attached to the West Los Angeles Detective Bureau, was one of the investigating officers in this case.

Officer Gotch first saw the defendant at his apartment at 5128 Marathon, Apartment 105, between 2:00 and 2:30 p.m., on July 5, 1955 [Tr. of R. p. 80].

To the best of Officer Gotch's recollection, the first time anything was said by the defendant about wanting to call an attorney was after he had had a sandwich, the milk, and a cigarette, in the Polygraph Room at Central Station, when the officer was alone with him. When he made the request the officer asked who the defendant wanted for an attorney and the defendant said he didn't know. The officer said that after the investigation was concluded the defendant could call an attorney and if he

didn't have any funds to hire an attorney when he went to court, a public defender would be assigned to handle his case.

The defendant said he had a friend who had been an instructor at Pepperdine College who would probably handle the case for him. The officer asked him for the name and the defendant said that the name was Simpson; that he lived in Long Beach [Tr. of R. p. 83].

Officer Gotch does not recall whether he or Officer Stambler used any profane language toward the defendant, but it is possible that they did [Tr. of R. pp. 86-87].

Officer Gotch never heard the defendant request an attorney other than on the occasion previously noted. The defendant was never struck nor threatened in the presence of Officer Gotch [Tr. of R. pp. 89-90].

Officer Gotch did not know the cause of Norma McCauley's death up to the time that Exhibit 18 was completed, and did not learn of it, aside from the confession of defendant, until sometime on July 6th, after the completion of the autopsy [Tr. of R. pp. 96-97].

At about 8:30, at the Central Station, the officers asked the defendant if he would take the lie detector test and, "if he was not involved, then he could clear himself and it would give us a chance to go out and look for the parties." [Tr. of R. pp. 102-103.]

The defendant said he would not take it. Officer Stambler never heard the statement that the defendant "wouldn't take it until he had a chance to talk to an attorney." [Tr. of R. p. 103.]

Officer Gotch did not use any profane or obscene language to the defendant.

From the time Officer Gotch came into the defendant's room in the early afternoon until he left him after 11 o'clock he never heard the defendant say that he would like to call an attorney or say anything about an attorney [Tr. of R. pp. 105-106].

J. H. Hooper is a Detective Sergeant assigned to the West Los Angeles Division of the West Los Angeles Police Department and was so assigned on July 5, 1955.

He first saw the defendant at about 11 o'clock on the evening of July 5, 1955, in the Detective Bureau of the West Los Angeles Police Station [Tr. of R. p. 108].

During the period that Sergeant Hooper was present from 11:00 to 12:00 o'clock the defendant made no request that he be allowed to see an attorney nor was there any discussion of an attorney. "When he didn't want to answer the question he just said he would rather not answer, or rather not make a statement about that." [Tr. of R. p. 110.]

It was pointed out to the defendant that the officers believed that he had killed Mrs. McCauley because of the wounds he had and the statements he made concerning how he got the wounds. In reply, the defendant said he didn't want to discuss it; didn't want to make any statement about it. The officer does not recall that he ever heard the defendant deny "it." [Tr. of R. p. 111.]

Sergeant Hooper does not recall any profanity either by himself or others but is sure that no obscene language was used [Tr. of R. pp. 111-112].

At no time from 11 o'clock in the evening, when he first met the defendant, until the early morning hours, when the officer concluded his investigation, did the defendant say anything about wanting to talk to an attorney [Tr. of R. p. 114].

Henry W. Kerr is an Inspector of the Los Angeles Police Department assigned to the Detective Bureau.

On July 5, 1955, he saw the defendant at 3:30 in the afternoon, at 5128 Marathon Street [Tr. of R. p. 115].

During the questioning at the Central Police Station, the defendant stated that he didn't want to say anything which might involve him or implicate him in any way; however, Inspector Kerr did not recall him saying anything about an attorney [Tr. of R. pp. 119-120].

To Inspector Kerr's best knowledge, the defendant was not questioned about the commission of the crime prior to going to the Crime Laboratory and Polygraph Room for the reason that the operator of the polygraph equipment prefers to have a subject "with as little previous discussion of the case as possible." [Tr. of R. pp. 121-122.]

Raymond C. Willis is a police officer of the City of Los Angeles Police Department, assigned to the Crime Laboratory, in the polygraph section, and was such on July 5, 1955 [Tr. of R. p. 132].

On that date, at about 5:30 p.m., he saw the defendant in the polygraph section in the old Central building.

At about 6:30, the defendant was brought into the room, seated "in the polygraph chair," and asked if he wanted to take the polygraph examination. The defendant declined to "take the polygraph directly" although there was no "direct denial or refusal to take the test." [Tr. of R. p. 133.]

Willis talked to the defendant for about an hour and a half, alone, explaining the workings of the polygraph. During that time Willis cannot remember the defendant ever stating that he didn't want to take the test until he

had a chance to talk to an attorney; toward the end of the conversation Willis asked the defendant why he refused to take the test. The defendant stated, "it was the self-preservation complex, self-protection complex." [Tr. of R. p. 134.]

Either "at that time or just when he was leaving" the defendant talked about an attorney who was a former instructor "that he thought he would like to contact some place along there." Willis wasn't sure whether it was "at that time or just when he was leaving" that this was said. Willis imagines that he "stated it was his privilege."

Willis explained the details of the physical operation of the polygraph machine to the defendant and told him "That if there is nothing to hide, nothing to be afraid of, it can do nothing but help you to clarify the situation and the subject's part of the situation to the officer for further investigation." [Tr. of R. pp. 136-137.]

At one time Willis asked him, "Have you ever killed anyone?" and the defendant "didn't answer in any way." [Tr. of R. p. 138.]

(2) Defense Testimony.

Raymond C. Simpson is an Attorney at Law, and was such on July 6, 1955.

He knows the defendant John Crooker, who was a student for two years at the time when the witness taught at Pepperdine College, and thereafter was acquainted with him socially when the defendant was in law school [Tr. of R. p. 220].

At approximately 4 o'clock on the afternoon of July 6th, he received a telephone call from a person who identified himself as Ernie Roll, who explained in substance that

he had a young man in the office who claimed to have been a student of the witness, to know the witness and who wanted to communicate with him; that his name was John Crooker. The witness stated that he did know him. Mr. Roll said, "He is here, you may now talk to him." The witness talked with the defendant who stated "the nature of his difficulty" and then asked, "How can I stop them from using force to make me answer questions," at which point Mr. Roll said, "Simpson, you know better than that, no force has been used by this office whatsoever, and Crooker knows better than that." The witness and Crooker had some further discussion, including something about "the absence of funds." Mr. Roll "then pointed out that funds or the money he had there in his wallet could not be released because it might very well be used as evidence." The witness was told that the defendant was going to be transported to the West Los Angeles Jail and that the witness could see him that evening. He was told that a statement had been taken from the defendant. He was not invited by Mr. Roll to "come down" and participate in a conversation that was then going on [Tr. of R. pp. 220-222].

During the conversation (by telephone from Mr. Roll's office) the defendant asked Mr. Simpson to represent him and to come down as soon as he could. Mr. Simpson did not decline to come to the District Attorney's office but was "under the impression" that the first convenient time to see him "as stated by Mr. Roll" would be that evening.

On cross-examination, Mr. Simpson testified with reference to the conversation between himself, Mr. Roll and the defendant, in substance, as follows:

That the call came to him from Mr. Roll, who told him that he was with a young man, John Russell Crooker,

arrested in connection with a murder. Mr. Simpson said that he was a former student of his. Mr. Roll said that he had tried to take a statement and that he had said he wanted to talk to Mr. Simpson and that he would put him on if Mr. Simpson wanted to talk to him; that Mr. Simpson thanked him; that the defendant came on the line and stated that he had been in custody since the previous day about noon; that he felt (at the time of the conversation) that he would like to have counsel at the earliest opportunity; that he didn't have much resources and that he understood that in court he would have the right to a public defender but that he had been given to understand that he could have representation at that time; that he would like to ask Mr. Simpson if he was inclined to "take the job"; that the defendant then said that Mr. Roll would talk with him; that the defendant would "go and get things"; that the defendant then asked whether he was able to "proceed with the questioning," whether "they" had the right to use physical force to have him continue "with the questioning" and whether he would have difficulty in court "substantiating the fact that they have if I am alone with them"; that Mr. Simpson said something and the defendant then said that "they" will attempt to continue with the questioning and "probably to avoid the force I will have to talk with them"; that at that point Mr. Roll "got on the wire" and said that he had heard what the defendant had said but that he told the defendant that he didn't have to answer a single question and then asked the defendant if that were not correct, that the defendant then said, "He just wants me to answer him if I have to answer any questions that he asked me"; that the defendant said that he had told the officers "all the way along the line" that he didn't want to

answer anything without counsel; that the defendant asked what in the world was going on and stated that "they are probably going to force me to talk with them"; that Mr. Roll then said that the defendant knew better than that; to wait a minute and permit him to say something; that "this man" came into his office; that he (Mr. Roll) asked him a few questions; that he said he wanted counsel; that Mr. Roll had said, "Do you have anyone in mind?" and that the defendant said, "I don't have money to hire counsel"; that Mr. Roll had explained about the public defender and gave him the yellow phone book to pick anyone he wanted that he thought would represent him; that he had said that he liked to have Mr. Simpson. Mr. Roll had had his secretary put the call in and had stopped any further questioning; that anything that the defendant would say would be free and voluntary and that he didn't have to answer a single question if he didn't want to; that the officers had already taken a complete statement which was before him; that all he had to do was say he didn't want to talk to Mr. Roll and he would be taken out of the room and booked and arraigned the following day. He then asked Mr. Simpson if he was going to represent the defendant; that Mr. Simpson said something and Mr. Roll then asked if Mr. Simpson would represent the defendant and said that if he wanted to refuse to answer on the ground of self-incrimination he could do so and that they would "then stop it"; that the defendant said that he was still on the line and that he would like to talk to Mr. Simpson a moment; that Mr. Roll said, "Well, let's make it fast. We have been on here quite awhile"; that the defendant then said that he had "told them as much as I know about this matter, and I have tried to express myself as well as possible. There are holes that I cannot fill and they insist that I fill them. I just

don't know"; that Mr. Simpson said something and the defendant then said, "All right. Thank you. Goodbye" [Tr. of R. pp. 226-230].

John Russell Crooker, Jr., testified on *voir dire*, with reference to Exhibit 18, as follows:

He lived at Apartment 105, 5128 Marathon Street, Los Angeles, on July 5, 1955 [Tr. of R. pp. 138-139].

He was there in the morning of that date and at about 11:00 or 12:00 noon he was seated in his apartment when he heard a key in the door and two officers came in with drawn guns [Tr. of R. p. 139].

They told him to raise his hands, which he did. He asked them what it was about. They said it was serious and they told him that he was under arrest.

Defendant asked if he could dress. He was given permission and he did dress. He then asked the officers if he would have time to call an attorney. The officers said he would have time. He did not make the call. "They had seated me in a chair in the opposite end of the room" [Tr. of R. p. 140].

After Sergeant Gotch arrived, defendant asked him "what this was all about" and if he could call an attorney. Gotch asked if he could search the apartment. Defendant told him that he would prefer that he obtain a warrant. The officer said he really didn't need one and, "You are going to go that route—that it was all right with him (sic)" [Tr. of R. p. 141].

After Lieutenant Armstrong arrived, defendant told him that he had asked to talk with an attorney before he answered Sergeant Gotch's questions to which Lieutenant Armstrong made no direct answer [Tr. of R. pp. 143-144].

Sergeant Gotch told the defendant he was under arrest for suspicion of murder before Lieutenant Armstrong came into the apartment. This was the first that anyone had told him of the reason for the officers being in his apartment [Tr. of R. p. 145].

At Central Station the defendant was told to take off his clothes, which he did, and he was photographed. Afterward he had a conversation with Lieutenant Armstrong during which he told him that if they would allow him to have an attorney he would be very willing to talk to them about whatever had happened [Tr. of R. pp. 148-149].

While in the defendant's apartment, the officers asked him for his car keys and the location of his car. He told them and they left with the keys and came back in half an hour with a brown manila envelope. It was last seen by the defendant in the glove compartment of his car.

After he was photographed at the Central Station, defendant was taken to the Polygraph Room where he saw Mr. Willis, who attached a band around his chest and said that he was going to give him a lie detector test. Mr. Willis was asked if he would mind defendant telling him, before he started, that he would prefer having an attorney with him before taking that test. Willis asked, "why" and defendant said he didn't know very much about the machine, that he still didn't know "what had happened," why he was "in the hands of the police" and therefore felt he should have an attorney with him [Tr. of R. pp. 150-152].

Defendant did not state that his primary reason for declining the lie detector test was a self-preservation complex [Tr. of R. p. 152].

Willis told defendant about the machine and said that he shouldn't have any reason for not taking the test if he had nothing to hide. He asked the defendant what the defendant had to hide that he wouldn't take the test. The defendant told him that he had told Officers Gotch and Armstrong that he had no objection to talking with them about whatever they had to talk about, but that he wanted counsel with him, that he wanted to talk to an attorney.

Defendant mentioned Ray Simpson, who had taught a history course at Pepperdine (taken by the defendant), who was also a practicing attorney [Tr. of R. p. 152].

Afterward, Lieutenant Armstrong "again prevailed upon" defendant to take the test. Defendant told him that he didn't mind taking the test but wanted an attorney with him when he took it [Tr. of R. p. 153].

Sergeant Gotch asked defendant if he was in love with Norma McCauley. Defendant thinks he said, "No," but if he did not say, "No," he "declined to answer that" [Tr. of R. p. 154].

After some questions about his employment by the deceased, defendant was asked some questions pertaining to his relationship with her, which he declined to answer.

Sergeant Gotch then said, "Now look, we have listened to your —b.s—long enough. Now I am going to tell you what I think. . . . Norma McCauley is dead. I think you killed her. You had been shaking her down for money, and you went out there and stabbed her and strangled her to death" [Tr. of R. p. 156].

Defendant didn't say anything in response to what Sergeant Gotch had said.

Officer Stambler "at my (defendant's) lack of response" used obscene and profane language and repeated what

Sergeant Gotch had said "about stabbing and strangling Norma."

Defendant denied that. He had "never done anything of that sort"; described generally his financial relationship with her; that he asked them, "since they came into my apartment, for an attorney, and I would rather not answer any more questions until I could have an attorney with me" [Tr. of R. pp. 156-157].

Before the defendant left Central Station, defendant asked Lieutenant Armstrong if the officers were going to use force to make him answer their questions before he could have an attorney with him. Lieutenant Armstrong said, "This is a free country." Defendant said, "I know that," and then asked him again if he was going to use force to make him answer all the questions. Lieutenant Armstrong said, "You don't have to say anything you don't want to" [Tr. of R. p. 158].

Defendant was then taken to West Los Angeles Station at about 10:30. There he met Officer Gravante, whom he told that he had asked for an attorney since the officers came to his apartment; that he would still like to have an attorney with him and that he would not like to answer questions until he had that attorney [Tr. of R. pp. 158-159].

A series of questions were then asked, defendant telling them that questions "pertaining to Norma" he didn't want to answer until he could talk to an attorney but "when they asked me questions about myself I answered them" [Tr. of R. p. 160].

Sergeant Hooper then "took over the questioning" and asked him if he were trying to refuse to answer on the grounds that it might incriminate him. The defendant

said no, that those were "his words"; that he (the defendant) had not used them and that he would like to have what he told the officers from the beginning, which is that he would like to have an attorney before he answered their questions.

Sergeant Hooper "jumped up from his chair over to my chair and banged his hand down on my knee." When he did so, defendant turned to Lieutenant Armstrong and said, "There, you see." Lieutenant Armstrong said, "What do you mean?" Defendant said, "They are going to use force to make me answer their questions before I have an attorney" [Tr. of R. p. 161].

Lieutenant Armstrong left and Sergeant Hooper said, "Look, you son-of-a-bitch, I have been in this work for 16 years, and I'm not going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know; and you are going to tell us now." With that he hit defendant with his fist in his stomach. Hooper said, "Did you hear me?" and hit defendant again in the stomach and defendant said, "Yes, I heard you." Hooper said, "Well then, answer me when I ask you something, say something to you. You are going to give me the answers that I want or I am going to take you out there and work on you like that for the rest of the night" [Tr. of R. pp. 161-162].

Officer Gravante then said that Sergeant Hooper meant exactly what he said. Defendant asked Gravante "what he wanted me to say and what I had to say to make them leave me alone." Gravante said that he wanted defendant to tell them what had happened. Defendant said he didn't know. Gravante said, "Well, I think you do know. I think that you killed Norma." Defendant told Gravante

that he would say anything "they wanted me to say if they would leave me alone" [Tr. of R. p. 162].

Defendant had a little more conversation with Mr. Gravante wherein he "tried to get him to tell me what he wanted me to say." Gravante said he would get a paper and pencil and defendant could write it down and defendant did begin to write.

Defendant identified Exhibit 18 as the statement he wrote at that time and place [Tr. of R. p. 162].

Defendant was taken back to the West Los Angeles Jail at about 5:05 a.m., and to the office of the District Attorney of Los Angeles County about "2:00, or 3:00, or 4:00 o'clock" of the afternoon of July 6, 1955 [Tr. of R. p. 167].

Mr. Roll wanted defendant to repeat what he had written "and started that process" when defendant interrupted him and told him that from the beginning he had asked for an attorney; that he would like to talk to an attorney before answering "their questions" and that "this statement had been made and was responsible for the fact—from the fact that they would not allow me to do so" (*sic*) and asked if he would let defendant "have an attorney with" him [Tr. of R. p. 168].

Up to this time defendant had not been able to use the telephone for any purpose.

Mr. Roll said that defendant would have the right to a public defender. Defendant testified that he believed that Mr. Roll asked him if he had any money, and believed that he told him that he had none; but that he would like to call an attorney and he believed (at that time of his testimony) that he "mentioned Raymond Simpson's name; that if he could not represent me, if he could not be with me, perhaps he could recommend someone who would."

Mr. Roll said again, that he could have a public defender when he got to court. Defendant asked why he couldn't have an attorney with him at that time. Mr. Roll pointed to Mr. Alexander and asked him to convey defendant's rights to him. Mr. Alexander told him that he could have a public defender. Defendant asked why he couldn't have an attorney with him then [Tr. of R. pp. 168-169].

Mr. Roll "finally" put through the call to Raymond Simpson in Long Beach. The defendant talked to Simpson on the phone. The conversation was not private. All the officers were present and "It was interrupted by Mr. Roll. . . ." who was "on an extension phone" [Tr. of R. p. 169].

Mr. Roll said to Mr. Simpson, "This boy doesn't have any money, you know, and you still want to represent him?" And he "talked to him in that vein." Defendant told Mr. Simpson "that they were making me answer their questions, Mr. Roll interrupted and said that there was no coercion used at all, and that everything I had said was free and voluntary and that—well, language to that effect; and cut me off from that conversation I was having with Mr. Simpson" [Tr. of R. p. 169].

At the time of the trial the defendant had studied "one academic year" of law which included criminal law [Tr. of R. p. 170].

Officers Jackson and Kruger did not in any way threaten or abuse the defendant. When the defendant asked for water or cigarettes, they gave it to him.

In the apartment the defendant was not in fear that he would be physcially harmed by Jackson or Kruger.

While in the apartment, neither did Sergeant Gotch nor Stambler use any physical violence on the defendant or threatened him in any way.

When they arrived, neither Ray Pinker nor Captain Stilison used any violence on or threatened the defendant in any way [Tr. of R. pp. 171-174].

Up to the time that the defendant was taken out of the apartment nobody had used any force of any kind on him nor had anybody threatened him in any way or abused him in any way; nothing that had been said or done up to that time caused him to have any fear of physical violence from any of the men in the apartment [Tr. of R. pp. 179-180].

At the Photographic Laboratory (at Central Station) no one used any violence on the defendant, no one threatened or abused him in any way nor did anyone insult him nor up to approximately 6 o'clock, when he left the laboratory, had any questions been put to him about Norma McCauley's murder [Tr. of R. p. 183].

From the laboratory he went to the Polygraph Room where he met Mr. Willis. He was left alone with him, no physical abuse was used on him up to that time, nor during the time Willis was with the defendant did Willis strike him or insult him [Tr. of R. p. 183].

Before the defendant left Central Station, Officer Armstrong told him that he did not have to say anything he didn't want to say, using "almost those exact words" [Tr. of R. p. 185].

No one struck the defendant at the Crime Laboratory, nor threatened to strike him; profanity may have been used but that did not frighten the defendant [Tr. of R. p. 186].

During the time that the defendant was writing Exhibit 18 he ran out of cigarettes and Officer Gravante let him have some of his; the defendant also had coffee during that time [Tr. of R. p. 196].

When the defendant asked Officer Gravante what the officer wanted him to write [in Ex. 18] Gravante did not tell him what to write. During the entire time that the defendant wrote, Officer Gravante did not direct him to write anything; he let him alone and permitted him to write; he told the defendant to put in his own words; the defendant "proceeded to put it in (his) own language."

However, Officer Gravante "added a word" so that a sentence which the defendant originally wrote reading, "I found a kitchen about ten inches long" was changed to read, "I found a kitchen knife about ten inches long"; when the defendant wrote that sentence in its original form he did not mean to say that he found a kitchen ten inches long [Tr. of R. pp. 198-199].

With reference to the matters appearing on page 5 of Exhibit 18, Officer Gravante asked the defendant questions "pertaining to it" and after asking those questions the defendant wrote that page in his own language, his own choice of words [Tr. of R. p. 200].

While the defendant was in Mr. Roll's office no one struck him, but upon being asked on cross-examination whether he was threatened, he testified that he tried to tell Mr. Roll of his "treatment the previous night"; that from the beginning of the interrogation he had been trying to have an attorney; that he had not been allowed to do so; that at that point Sergeant Hooper stopped him from talking and said, "I don't believe that we hurt you"; that the defendant told Mr. Roll that Sergeant Hooper

had hit him twice or "told that to Sgt. Hooper"; that Sergeant Hooper repeated, "I don't believe that we hurt you." This he stated was, "What I was apprehensive of." He testified further that he believed that he was threatened "by the very presence of the same officers who had interrogated" him the previous day and that he felt threatened "by Mr. Roll's attitude with Mr. Simpson" and did not feel that he could say to Mr. Simpson what he wanted to say to him.

When asked on cross-examination what Mr. Roll said to Mr. Simpson that he, the defendant, considered a threat to him, he stated that he didn't recall the exact language but that he did recall "his interrupting my conversation with Mr. Simpson on two occasions" of which "I was apprehensive" to this extent: "that I had been trying from the beginning to have an attorney with me. I thought that this was my opportunity, and if I did not have it, I had not accomplished anything"; that he felt that if he "said anything to Mr. Simpson that the conversation would be ended and that I would be back in the hands of the same officers who had worked on me the night before" [Tr. of R. pp. 203-205].

The defendant testified that he had a separate conversation with Deputy District Attorney Alexander, after the discussion on the telephone with Mr. Simpson and with Mr. Roll, wherein he told him that he had, since the interrogation started, repeatedly asked for an attorney which had been refused; that he felt that the officers had forced him to answer questions "and to say what I had already said"; that he had felt the same thing had happened "right there in Mr. Roll's office"; that he didn't know "what (he) could do about it" and "implored him" to "make the officers leave me alone at this point"; that he

wanted to have an attorney with him; to which Mr. Alexander said that they were all through with him, that was all "that they were going to do" to him [Tr. of R. pp. 232-233].

Defendant saw an attorney on the evening of July 6, 1955, and was arraigned in court the following day [Tr. of R. p. 623].

When defendant was asked for whose protection he wanted to talk to an attorney before he told what he knew he answered that it was for "Norma's" protection [Tr. of R. pp. 622-623].

(3) Prosecution's Rebuttal.

Grover H. Armstrong was not told by the defendant, at the premises where the defendant was arrested by him on the afternoon of July 5, that he did not want to talk until he could see an attorney. At the Central Station the defendant did not say that if he could have an attorney he would be willing and anxious to talk about anything that had happened [Tr. of R. p. 235].

That in the Polygraph Room the defendant did not state that he didn't mind taking the test but that he wanted an attorney [Tr. of R. p. 235].

At the West Los Angeles Police Station Sergeant Hooper did not jump up from his chair and "bang his hand down on the defendant's knee" in Lieutenant Armstrong's presence; that the defendant did not then say to him, "There, you see," nor the witness say, "What do you mean?"; nor the defendant say, "They are going to use force to make me answer their questions before I have an attorney."

When he was brought back to the West Los Angeles Police Station, he looked "very much like he did when (the witness) first saw him, . . ." [Tr. of R. pp. 235-236].

Henry W. Kerr did not see Sergeant Hooper strike the defendant at any time nor did the defendant at any time make any complaint that anybody had struck him.

Sergeant J. H. Hooper did not jump up from a chair, go over to the defendant's chair and bang his hand down on the defendant's knee at any time, nor did the defendant then turn to Lieutenant Armstrong and exchange remarks with him and then say, "They are going to use force to make me answer their questions before I have an attorney."

Sergeant Hooper made no such statement as calling the defendant a son-of-a-bitch or state that he had "been in this work for sixteen years . . ."; nor say that he was not going to let the defendant tell him that he was not going to answer questions and that the defendant was going to tell the officers what they wanted to know and do so at that time. The officer did not make any part of such statement [Tr. of R. pp. 242-243].

Sergeant Hooper did not strike the defendant in the stomach or touch him at all, nor did he say, "Did you hear me?" and hit him again in the stomach, nor did the conversation occur wherein the defendant testified that he said, "Yes, I heard you," and Sergeant Hooper then said, "Well, then answer me . . ."

Nor did he say that the defendant was going to give the officers the answers that he wanted or that the officer was going to take the defendant out and "work on (him) like that for the rest of the night," nor did Officer Gravante thereafter say that Sergeant Hooper meant exactly what he said [Tr. of R. p. 243].

At the time of the trial Sergeant Hooper had been a police officer for at least fourteen years.

Theodore B. Ley is a police officer attached to the West Los Angeles Jail; he is the "Day Watch Jailer" and was on duty July 6, 1955; on that morning he had a conversation with the defendant wherein the witness asked the defendant in his cell, "if he wanted to put in a call for an attorney," and the defendant told the officer that he "had no attorney and he had no one to call." The officer asked him "about his relatives," if he wanted to put a phone call in to his relatives; that the defendant said "his relatives were all in the East and he didn't want to bring them into it" [Tr. of R. pp. 244-245].

William Stambler did not at any time hear Sergeant Gotch say to the defendant, "You stabbed her and strangled her to death?"; nor did he (Stambler) say to the defendant, "You stabbed her and strangled her to death?" [Tr. of R. p. 254].

Officer Gravante testified that in Lieutenant Armstrong's office, prior to the time that the defendant wrote Exhibit 18, Sergeant Hooper did not jump up from his chair, go over to the defendant's chair and bang his hand down on the defendant's knee, nor did defendant then turn to

Lieutenant Armstrong and say, "There, you see," nor did Armstrong say, "What do you mean?" or anything like that [Tr. of R. p. 266].

Nor did the defendant say, "They are going to use force to make me answer their questions before I have an attorney," and Sergeant Hooper did not say,

> "Look, you son-of-a-bitch, I have been in this work for sixteen years and I am not going to let someone like you come in here and tell me he is not going to answer questions. You are going to tell us what we want to know, and you are going to tell us now." [Tr. of R. pp. 266-267.]

Sergeant Hooper did not strike the defendant with anything in the stomach nor did he say, "Did you hear me," and hit the defendant again in the stomach nor did the defendant say that he had heard him; nor did Sergeant Hooper say, "Well, then, answer me when I ask you somthing, say something to you," nor did Sergeant Hooper say that the defendant was going to give him the answers that he wanted or that he was going to take him "out there and work on (him) like that for the rest of the night"; nor did the witness say to the defendant, "Hooper meant exactly what he said" [Tr. of R. p. 267].

The defendant did not ask the witness what he or Hooper wanted him to say or ask what he had to say "to make them leave him alone." The defendant did not say that he would say anything they wanted him to say if they would leave him alone [Tr. of R. p. 267].

Just prior to the defendant's starting to write Exhibit 18, the officer asked the defendant about the wounds on his hand and the "mark that he had on his neck." The defendant stated that he got the wound on his hand from helping a vehicle that needed a push; the bumpers locked, and he received the injury in that manner; that he got the mark on his neck while shaving, to which the officer replied that it looked to him "like a fingernail scratch mark." To this the defendant did not answer [Tr. of R. p. 268].

Officer Gravante then asked the defendant to relate any additional information that he could about his activities on July 5, and about the threats that he had made to Mrs. McCauley. He asked the defendant if he had been in the vicinity of 1100 Somera Road. The defendant then stated that he didn't care to discuss it. The officer told him that all that they wanted was the truth; that there was only one person who knew what occurred up at 1100 Somera Road on the night in question. Immediately afterwards the defendant said, "Well, I will write it out for you." The officer gave the defendant a pen and a yellow legal tablet and the defendant began to write [Tr. of R., p. 268].

During the time that he wrote Exhibit 18 the officer did not tell him what to write. During the time he was writing, he was smoking. Cigarettes were supplied by the officer. He asked for coffee and the officer sent for some, which was brought [Tr. of R. pp. 268-269].

Lois R. Johnson is a Legal Statement Reporter for the County and was such on July 6, 1955.

On that date she was in the office of the District Attorney, S. Ernest Roll. The defendant was there; she had a Stenograph Machine and she took a statement.

The statements made by the defendant were free and voluntary; no force or duress was used on him by anyone, nor was any promise of reward or hope of immunity extended to him [Tr. of R. p. 331].

The matters taken down on the Stenograph Machine were afterwards transcribed in typewriting and compared with the original notes, and the copy marked Exhibit 29 for identification is an exact copy thereof.

The Court sustained an objection to the use of any portion of Exhibit 29 for identification after the point where the statement was interrupted for the purpose of a telephone call [Tr. of R. p. 341].

Summary of the Argument.

Respondent respectfully submits that:

1. A defendant is not denied due process under the Federal or State Constitutions by refusal of investigating officers to allow him to consult with an attorney while he is in custody and being interrogated by the officers; and that
2. This defendant was not denied due process of law under the circumstances of this case by the admission into evidence of the confession made by him while he was in custody and not allowed to consult with an attorney.

ARGUMENT.

I.

The Defendant Was Not Denied Due Process of Law by Any Refusal of the Investigating Officers to Allow Him to Consult With an Attorney While He Was in Custody and Being Interrogated by Investigating Officers.

Respondent submits that the very statement of the first of the two limiting questions presented on the granting of certiorari in this matter presents a completely novel contention in its implications for the reason that this court has never held, nor to respondent's knowledge has any court held, that an entire criminal proceeding is rendered void if it follows a deprivation of defendant's constitutional rights during the course of the investigation, no matter how clear such violations might be.

Such violations have been held to vitiate convictions only when they have been found to have been had as the result of the use of a confession or other product of the mistreatment.

Stein v. People of the State of New York, 346 U. S. 156, 73 S. Ct. 1077, 1092;

Brown v. Mississippi, 297 U. S. 278, 56 S. Ct. 461 (use of a coerced confession); and

Rochin v. California, 342 U. S. 165, 72 S. Ct. 205 (forcible removal of stomach contents).

Such a sweeping declaration would enable a guilty defendant to escape just punishment because "the constable blundered," no matter how strong the remaining proof. Thus a prosecutor, with ample direct evidence of the crime and the defendant's participation therein, might find himself helpless to proceed against him because of such a preliminary mistake on the part of an arresting officer.

Respondent submits that a rule judicially declared by this Court entirely vitiating any judicial proceedings when an investigating officer has not with sufficient promptness complied with a request for counsel, no matter how fair the trial proceedings, would create an obstacle to the just disposition of a criminal case disproportionate to the proper advantage extended thereby to persons charged with crime.

We have confined our discussion of this question precisely as this Court has limited it. As to the admission of a confession obtained during a period of detention and interrogation prior to arraignment, without counsel, see II, *infra*.

It must be conceded in the instant case that the defendant was represented by, and consulted with, counsel of his own choice at all stages following the institution of judicial proceedings. (*Cf. Powell v. Alabama*, 287 U. S. 45, 53 S. Ct. 55.)

The rule in California regarding the right to counsel in one's defense is stated in the opinion of the California Supreme Court in the instant case as follows:

> "The due process clause of the fourteenth amendment of the federal Constitution and article I, section 13, of the California Constitution guarantee a defendant the right to be represented by counsel in every stage of the proceedings, and deprivation of this guarantee may be a violation of the due process clause of the fourteenth amendment. To constitute deprivation of due process, however, the denial of the right of the accused to be represented by counsel in every stage of the proceedings must have so fatally infected the regularity of his trial and conviction as to violate the fundamental aspects of fairness and result in a miscarriage of justice. (Lisenba v. California, 314 U. S. 219, 236 [62 S. Ct. 280, 86 L. Ed. 166]; cf.

Stroble v. California, 343 U. S. 181 at 197 [72 S. Ct. 599, 96 L. Ed. 872].)" (*People v. Crooker*, 47 Cal. 2d 348, 303 P. 2d 753.)

See:

Bute v. People of the State of Illinois, 333 U. S. 640, 68 S. Ct. 763.

Petitioner and *Amicus Curiae*, in their briefs and discussions of this point (Point I), have failed to discuss any such consequence as is suggested by the first limiting question presented on the granting of certiorari, to wit: Was the defendant denied due process of law by the refusal of the investigation officers to allow him to consult with an attorney upon demand being made to do so while he was in custody? Petitioner and *Amicus Curiae* have extended their discussions to the voluntary aspect of the confession, a discussion more proper under Point II *infra*. For the sake of accuracy, respondent will confine argument as to this matter to the heading II.

II.

This Defendant Was Not Denied Due Process of Law Under the Circumstances of This Case by the Admission Into Evidence of the Confession Made by Him While He Was in Custody and Was Not Allowed to Consult With an Attorney.

On July 5, 1955, defendant and petitioner John Russell Crooker, Jr. was arrested about 1:30 p.m. The arrest was made in his apartment and was for the murder of Norma McCauley. Crooker, aged 31 years, was a graduate of Pepperdine College, with the degree of Bachelor of Arts. He studied law at Southwestern University and at the University of California at Los Angeles. This study included the study of criminal law. He had learned

his lesson well for he was able to advise the polygraph operator, during the course of the interrogation, concerning the law of admissibility of evidence obtained by the use of the polygraph, commonly called the lie detector. He told the operator that such evidence was not admissible except upon stipulation of the attorneys [Tr. of R. p. 134].

See:

People v. Wochnick, 98 Cal. App. 2d 124, 219 P. 2d 70;

People v. Houser, 85 Cal. App. 2d 686, 193 P. 2d 937.

Crooker was told by at least one police officer that he did not have to say anything he did not want to say [Tr. of R. p. 158]. Defendant knew he did not have to answer questions and exercised this right not to answer certain questions [Tr. of R. p. 73]. Concerning his request to see an attorney, one of the police officers testified as follows [Officer Gotch on *voir dire* examination; Tr. of R. p. 83]:

"Q. When he made the request for an attorney, what did you tell him? A. I asked him who did he want for an attorney.

Q. And he said what? A. He stated he didn't know.

Q. What else did he say on this subject? A. I stated to him that after our investigation was concluded he could call an attorney, and if he didn't have funds to hire an attorney, when he went to Court a public defender would be assigned to handle his case.

He then stated that he had a friend who had been an instructor at Pepperdine College that would probably handle the case for him. I asked him who the

name was, and he said it was a man by the name of Simpson, who lived in Long Beach.

Q. He asked you if he could call an a orney at that time, and you told him that he could call after your investigation was completed, is that right? A. I told him, after I was through with the investigation, he could make a call."

The other officers who interrogated defendant testified that they did not hear the defendant make a request for an attorney. Officer Gotch never heard the defendant make that request again.

The West Los Angeles day watch jailer testified that, at a time after the making of the confession, defendant was asked if he wanted to call an attorney or some relative and that defendant stated that he had no attorney and that he had no desire to bring his relatives into it [Tr. of R. p. 245].

Defendant testified at the trial, in response to a question as to the purpose he had in requesting an attorney, that it was for the protection of the deceased, Norma McCauley [Tr. of R. p. 623].

This was the only time that defendant requested an attorney between the time of his arrest and the time of his confession made at approximately 3:30 the following morning, according to all the witnesses except, of course, the defendant himself; nor is there any suggestion in the evidence, other than the testimony of defendant, of any type of coercion; to the contrary, every officer testified that no force or violence or any other form of coercion was used toward defendant. (See Statement of Facts, *supra*, for a detailed digest of this testimony.)

We have set forth the above summary of the facts consistent with the implied findings of the verdict of the trial

jury, as well as the finding of the trial judge initially in admitting the confession into evidence and in denying the motion for a new trial. This is consistent with the decisions of this court as to the determination of conflicts in evidence.

In *Lisenba v. People of State of California*, 314 U. S. 219, 62 S. Ct. 280, 291, this court said:

> "There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.
>
> "Here judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of due process; this notwithstanding the issue submitted was not eo nomine one concerning due process. Furthermore, in passing on the petitioner's claim, the Supreme Court of the State found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency. There remains the uncontradicted fact that on two occasions, separated by an interval of eleven days, the petitioner was questioned for protracted periods. He made no admission implicating him in his wife's death during, or soon after, the interrogations of April 19, 20, and 21. If, without more, eleven days later confessions had been forthcoming we should have no hesitation in overruling his contention respecting the admission of his confessions."

See:

Stroble v. California, 343 U. S. 181, 72 S. Ct. 599.

It should be noted that the *Lisenba* case (as well as the *Stroble* case) arose in the same Superior Court and was reviewed in the same state Supreme Court as the instant case. Thus the finding in the instant case has been made contrary to the defendant's position twice by the trial judge (once on admitting the confession subject to the jury finding as to its voluntary nature, and second, on the denial of the motion for a new trial), by the trial jury and by the Supreme Court of the State of California, wherein the court stated:

"An examination of the record discloses conflicting testimony, that of the officers denying any force or that promises were made to defendant in consideration of the confession he made, and defendant's statement that he was slapped on one occasion and struck in the stomach on several occasions. In addition, when he took the stand, defendant was examined in detail as to his confession by the deputy district at-

torney and in each instance he admitted the officers had not told him what to say or write in his confession.

"The conflict in the testimony was thus squarely placed before the jury, whose finding was resolved against defendant's contentions, and it is binding upon this court. (People v. Mehaffey, 32 Cal. 2d 535 at 548 [7], 553 [11] [197 P. 2d 12].)" (*People v. Crooker, supra.*)

(At this point respondent makes reference to the Statement of Facts, *supra*, and in particular to the summary of the detailed and thorough cross-examination of defendant concerning the making of the confession).

Concerning the contention that defendant's confession was inadmissible because obtained in violation of his constitutional rights, the California Supreme Court also said:

"Second: That defendant's confession was obtained in violation of his constitutional rights and therefore was inadmissible in evidence.

"This contention is likewise devoid of merit. As pointed out above, there was a conflict in the evidence as to whether the confession was voluntary. There was also a conflict in the evidence as to the facts upon which the conclusion was necessarily based that the confession was free and voluntary, by the court in the first instance and finally by the jury to whom the matter was submitted on proper instructions. Since the evidence fully supports the finding of the trial court and the jury, their finding that the confession was freely and voluntarily made and not in violation of any of defendant's constitutional rights is binding upon this court. (People v. Mehaffey, supra.)"

Our position in summarizing the above stated facts favorably to respondent's position is also supported by *Lyons v. Oklahoma,* 322 U. S. 596, 64 S. Ct. 1208, 1212, wherein this court said:

> "When conceded facts exist which are irreconcilable with such mental freedom regardless of the contrary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and the jury are not only in a better position to apprise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. Lisenba v. California, supra, 314 U. S. page 238, 62 S. Ct. page 290, 86 L. Ed. 166.
>
> ". . .
>
> "Review here deals with circumstances which require examination into the possibility as to whether the judge and jury in the trial court could reasonably conclude that the McAlester confession was voluntary. The fact that there is evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony of prisoner and official alike."

This brings us to the basic consideration of the rules heretofore established by this court for the testing of a contention of a deprivation of due process of law by the withholding of requested services of counsel, prior to the making of a confession, and the subsequent introduction of such confession into evidence.

In the often cited case, *Lisenba v. People of State of California, supra,* 314 U. S. 280, 62 S. Ct. 290, this court stated:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevent a fair trial. Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession."

In *Lyons v. Oklahoma, supra,* 322 U. S. 596, 64 S. Ct. 1212, it is stated:

> "The federal question presented is whether the second confession was given under such circumstances that its use as evidence at the trial constitutes a violation of the due process clause of the Fourteenth Amendment, which requires that state criminal proceedings 'shall be consistent with the fundamental principles of liberty and justice.' (Citations.)
>
> "No formula to determine this question by its application to the facts of a given case can be devised. (Citations.) Here improper methods were used to obtain a confession, but that confession was not used at the trial. Later, in another place and with different persons present, the accused again told the facts of the crime. Involuntary confessions, of course, may be given either simultaneously with or subsequently to unlawful pressures, force or threats. The question of whether those confessions subsequently given are themselves voluntary depends on the

inferences as to the continuing effect of the coercive practices which may fairly be drawn from the surrounding circumstances. Lisenba v. California, 314 U. S. 219, 240, 62 S. Ct. 280, 291, 86 L. Ed. 166. The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, at the time he confesses, is in possession of 'mental freedom' to confess to or deny a suspected participation in a crime."

In *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1092, it is stated:

"But the inquiry as to such allegations has a different point of departure. Interrogation is not inherently coercive, as is physical violence. Interrogation does have social value in solving crime, as physical force does not. By their own answers many suspects clear themselves, and the information they give frequently points out another who is guilty. Indeed, interrogation of those who know something about the facts is the chief means to solution of crime. The duty to disclose knowledge of crime rests upon all citizens. It is so vital that one known to be innocent may be detained, in the absence of bail, as a material witness. This Court never has held that the Fourteenth Amendment prohibits a state from such detention and interrogation of a suspect as under the circumstances appears reasonable and not coercive.

"Of course, such inquiries have limits. But the limits are not defined merely by calling an interrogation an 'inquisition,' which adds to the problem only the emotions inherited from medieval experience. The limits in any case depend upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. What would be overpowering to the weak of will or mind might be utterly ineffective against an experienced criminal."

This is the same standard that has been utilized in every case according to its total facts.

See:

Fikes v. Alabama, 352 U. S. 191, 197-198, 77 S. Ct. 281, 285.

Examining the facts of the instant case in light of the above cited guiding rules laid down by this court, it is at once apparent that this defendant and the circumstances surrounding the making of his confession were distinguishably different from the corresponding circumstances of any case wherein this court has or should reverse the judgment of a state court for the reasons herein urged by petitioner. Both petitioner and *Amicus Curiae* rely heavily on the recent case of *Fikes v. Alabama, supra.* The defendant in the *Fikes* case was a mentally subnormal Negro with a third grade education. To compare him with the defendant in the instant case is to completely distinguish that authority. Here is no illiterate, uneducated youth surrounded by a hostile atmosphere, interrogated for days on end by relays of officers. Rather, defendant is a mature man of 31 years, well educated, specifically in law and particularly in criminal law, who was told he did not have to answer any questions and who exercised that right when in his judgment the occasion warranted.

Respondent cannot conceive what information an attorney could have given him of which he had not already evidenced knowledge.

Since deprivation of counsel is the only possible element of coercion open to this defendant at this stage of the proceedings, and since under the above cited rules establishing such deprivation as only one of the elements to be considered, in passing on the voluntary nature of a con-

fession, it is difficult to conceive of a set of circumstances where such deprivation could have less "fatally infected the regularity of his trial and conviction."

The most experienced criminal counsel could only have told the defendant that he had a right not to answer questions and have advised him to exercise that right. The evidence reflects that he was advised of this right and that he, in fact, exercised it as to certain questions. Surely, due process of law does not contemplate access to counsel for the purpose of assisting in the fabrication of facts, as may be suggested by defendant in his brief, where he sets up the alleged necessity for advice as to telling the truth concerning his relationship with the deceased. As this Honorable Court said in *Stein v. People of New York, supra*, 346 U. S. 156, 73 S. Ct. 1077, 1092, where interrogation is not inherently coercive, as is physical violence, it does have social value in solving crime, as physical force does not. By their answers many suspects clear themselves, and the information they give frequently points out another who is guilty. The duty to disclose knowledge of crime rests upon all citizens. It is submitted that the Fourteenth Amendment does not prohibit a state from such detention and interrogation of suspects as under the circumstances appears reasonable and not coercive.

See:

3 Wigmore, Evidence (3d Ed.), Sec. 851, pp. 319-320;

20 Am. Jur., Evidence, Sec. 503, pp. 434-435;

Fred E. Inbau, "The Confession Dilemma in the United States Supreme Court," 43 Ill. L. Rev., p. 442.

As this court said in *Lyons v. Oklahoma, supra,* 322 U. S. 596, 64 S. Ct. 1208, 1212:

> "The mere questioning of a suspect while in the custody of police officers is not prohibited either as a matter of common law or due process."

See:

Lisenba v. California, supra, 314 U. S. 219, 239-241, 62 S. Ct. 280, 291, 292;

Ziang Sung Wan v. United States, 266 U. S. 1, 14, 45 S. Ct. 1, 3;

State v. Sullivan, 227 F. 2d 511 (cert. den. 350 U. S. 973, 76 S. Ct. 449).

The Court might have been speaking of the instant case in *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1094, wherein it is said:

> "Petitioners confuse the more rigid rule of exclusion which, in the exercise of our supervisory power, we have promulgated for federal courts with the more limited requirements of the Fourteenth Amendment. This, we have held, did not impose rules of evidence on state courts which bind them to exclude a confession because, without coercion, it was obtained while a prisoner was uncounseled and illegally detained."

Petitioner's brief wholly fails to distinguish between those same powers of this Court.

The California Supreme Court, in *Rogers v. Superior Court of Alameda County,* 46 Cal. 2d 3, 10, 291 P. 2d 929, has stated:

> "The test ordinarily used by state courts to determine the admissibility of a confession is, whether, considering all the circumstances, it was freely and

voluntarily made without any inducement held out to the accused. (See 19 A. L. R. 2d 1332, 1336-1345; 20 Am. Jur., Evidence, §482.) Since the McNabb case, the state courts that have had occasion to re-evaluate their test of admissibility as it applies to a confession made during illegal detention continue to treat delay in arraignment as only one of the factors to be considered in determining whether the statement was voluntarily made. Apparently none of the states following the rule excluding illegally obtained evidence have adopted the rule of the McNabb case; and we are not disposed to adopt it."

The distinction must be borne in mind between cases coming before this court in its supervisorial capacity over federal courts and its examination of constitutional limitations on proceedings in state courts. This distinction is well observed in the case of *Brown v. Allen*, 344 U. S. 443, 73 S. Ct. 397, 417:

"Under the leadership of this Court a rule has been adopted for federal courts that denies admission to confessions obtained before prompt arraignment notwithstanding their voluntary character. McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed. 819; Upshaw v. United States, 335 U. S. 410, 69 S. Ct. 170, 93 L. Ed. 100. Cf. Allen v. United States, 91 U. S. App. D. C. 197, 202 F. 2d 329. This experiment has been made in an attempt to abolish the opportunities for coercion which prolonged detention without a hearing is said to enhance. But the federal rule does not arise from constitutional sources. The Court has repeatedly refused to convert this rule of evidence for federal courts into a constitutional limitation on the states. Gallegos v. State of Nebraska, 342 U. S. 55, 63-65, 72 S. Ct. 141,

146-147, 96 L. Ed. 86. Mere detention and police examination in private of one in official state custody do not render involuntary the statements or confessions made by the persons so detained. Petitioner's constitutional rights were not infringed by the refusal of the trial court to exclude his confessions as evidence."

See:

Gallegos v. State of Nebraska, 342 U. S. 55, 63-65, 72 S. Ct. 141, 146-147.

Under the decisions of this court deprivation of counsel is only one of the factors to be considered in weighing the matter of claimed lack of due process depending on the voluntary nature of the confession.

The jury in the instant case was instructed as follows:

"You are instructed that a defendant in a criminal case has a constitutional right to counsel at all stages of the proceedings. Refusal to grant a prisoner's request for counsel constitutes a denial of fundamental rights. Whether or not the defendant asked for counsel, and if he did, whether he was or was not denied an opportunity to consult with counsel, are circumstances you may consider, among others, in determining whether the written confession was voluntary or involuntary."

In commenting on this matter the Supreme Court of California said:

"Thus the question was presented to the jury for its determination as to whether defendant's request for an attorney and the officers' conduct relative thereto resulted in a denial of defendant's fundamental rights, and the jury found against defendant's con-

tention. In view of the evidence, we are of the opinion the jury's determination was amply supported." (*People v. Crooker*, 47 Cal. 2d 348, 352, 303 P. 2d 753.)

Wholly consistent with these views is *Gallegos v. Nebraska, supra,* wherein this Court said:

"Prolonged detention without a charge of crime or without preliminary appearance before a magistrate, the lack of counsel before, during, or after arraignment, and confession to the police in private, are, however, elements that should be considered in determining whether a confession, permitted to be introduced and relied upon at a trial, has been obtained under such circumstances that its use violates due process. Watts v. State of Indiana, 338 U. S. 49, 54, 69 S. Ct. 1347, 1350, 93 L. Ed. 1801."

Mr. Justice Jackson, concurring and dissenting in *Watts v. State of Indiana,* 338 U. S. 49, 69 S. Ct. 1357, 1359, said:

"If the right of interrogation be admitted, then it seems to me that we must leave it to trial judges and juries and state appellate courts to decide individual cases, unless they show some want of proper standards of decision. I find nothing to indicate that any of the courts below in these cases did not have a correct understanding of the Fourteenth Amendment, unless this Court thinks it means absolute prohibition of interrogation while in custody before arraignment.

"I suppose no one would doubt that our Constitution and Bill of Rights, grounded in revolt against the arbitrary measures of George III and in the philosophy of the French Revolution, represent the maximum restrictions upon the power of organized society over the individual that are compatible with

the maintenance of organized society itself. They were so intended and should be so interpreted. It cannot be denied that, even if construed as these provisions traditionally have been, they contain an aggregate of restrictions which seriously limit the power of society to solve such crimes as confront us in these cases. Those restrictions we should not for that reason set aside, but that is good reason for indulging in no unnecessary expansion of them.

"I doubt very much if they require us to hold that the State may not take into custody and question one suspected reasonably of an unwitnessed murder. If it does, the people of this country must discipline themselves to seeing their police stand by helplessly while those suspected of murder prowl about unmolested. Is it a necessary price to pay for the fairness which we know as 'due process of law'? And if not a necessary one, should it be demanded by this Court? I do not know the ultimate answer to these questions; but, for the present, I should not increase the handicap on society."

Reference is also made to the dissenting opinion of Mr. Justice Burton in *Haley v. State of Ohio*, 332 U. S. 596, 68 S. Ct. 302, 310, wherein it is stated:

". . . While the constitutional and statutory rights of the accused, under such circumstances, must be safeguarded carefully, it is equally clear that serious constitutional and statutory obligations rest upon law enforcement officers to discover promptly those guilty of such an unprovoked murder as had been committed. . . ."

As the court said in *Stein v. People of State of New York, supra,* 346 U. S. 156, 73 S. Ct. 1077, 1099:

> "We are not willing to discredit constitutional doctrines for protection of the innocent by making of them mere technical loopholes for the escape of the guilty. The petitioners have had fair trial and fair review. The people of the State are also entitled to due process of law."

Conclusion.

For these reasons, and based upon the record and authorities cited herein, respondent submits that this court should hold that no violation of any constitutional right of this petitioner fatally infected the regularity of the proceedings as to prevent a fair trial; that therefore this petitioner was not denied due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and that, as a consequence, the judgment of the California Supreme Court be affirmed.

Respectfully submitted,

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